

SBH Exh. 64

BAKER & HOSTETLER

SBH Exh. 64

IN CLEVELAND, OHIO  
3200 NATIONAL CITY CENTER  
CLEVELAND, OHIO 44114  
(216) 821-0200  
TWX (810) 421-8375

IN COLUMBUS, OHIO  
65 EAST STATE STREET  
COLUMBUS, OHIO 43215  
(614) 228-1541

IN MARYLAND  
ONE BOULEVARD PLAZA  
9658 BALTIMORE BLVD., SUITE 206  
COLLEGE PARK, MARYLAND 20740  
(301) 441-2781

COUNSELLORS AT LAW  
WASHINGTON SQUARE, SUITE 1100  
1050 CONNECTICUT AVE., N.W.

WASHINGTON, D.C. 20036

(202) 861-1800

TELECOPIERS:

(202) 861-1783 (202) 861-1790

(202) 861-1645 (202) 861-1791

TELEX (650) 835-7276

IN DENVER, COLORADO  
303 EAST 17TH AVE., SUITE 1100  
DENVER, COLORADO 80203  
(303) 861-0600

IN ORLANDO, FLORIDA  
200 SOUTH ORANGE AVE., SUITE 2300  
ORLANDO, FLORIDA 32801  
(407) 841-1111

IN VIRGINIA  
437 NORTH LEE STREET  
ALEXANDRIA, VIRGINIA 22314  
(703) 549-1294

July 5, 1989

WRITER'S DIRECT DIAL NO.:

(202) 861-1751

Thomas A. Gugliotti, Esq.  
Schatz & Schatz, Ribicoff & Kotkin  
90 State House Square  
Suite 900  
Hartford, CT 06103-3902

Re: Astroline Communications  
Amendment to Limited  
Partnership Agreement

Dear Tom:

Pursuant to your request, I am enclosing a copy of "Astroline Communications Company Limited Partnership First Amendment to Amended and Restated Limited Partnership Agreement and Certificate." The main purpose of this amendment was to restructure the partnership so as to assure that the limited partners would be insulated from the day to day operations of the television station. Insulation of the limited partners is essential to the protection of Astroline's minority preferences. As you know, however, the Commission has yet to process Astroline pro forma request for permission to restructure its partnership interests.

If you have any further questions, please feel free to call me.

Sincerely,

  
Linda R. Bocchi

Enclosure

cc: Edward Hayes, Jr., Esq.  
Lee H. Simowitz, Esq.

80920-85-001  
1262:2667

BH 0609

Federal Communications Commission

Docket No. Shubug Exhibit 64

Presented Shubug Broadcasting

Disposition

Reported George Holmes

Date 9-23-98

Identified X

Received X

Rejected X

**FILED**

**ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP  
FIRST AMENDMENT TO AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT AND CERTIFICATE**

ORIGINAL FORMATION DATE MAY 29, 1984

RECEIVED  
DECEMBER 7 1988  
CONSULTANT OF STATE  
CORPORATION DIVISION

The undersigned, desiring to amend the Amended and Restated Limited Partnership Agreement and Certificate (the "Original Agreement") of Astroline Communications Company Limited Partnership (the "Partnership"), dated as of December 31, 1985, in order to (i) reflect the withdrawal of Danielle Webb as a Limited Partner and the transfer of her 1% interest in the Partnership to WHCT Management, Inc., on March 13, 1986, (ii) reflect the transfer by WHCT Management, Inc., to Terry Planell of an additional 2% limited partner interest in the Partnership on December 26, 1986, (iii) reflect the retirement of Thomas A. Hart, Jr., as a General Partner and the transfer of his 1% interest in the Partnership to WHCT Management, Inc., on April 7, 1987, (iv) reflect contributions of capital to the Partnership by certain of its Limited Partners during 1986 and 1987, (v) reflect the withdrawal of Astroline Company as a Limited partner and the transfer of its 58% interest to Astroline Company, Inc., on November 2, 1988, and the simultaneous admission of Astroline Company, Inc., as a Limited Partner, (vi) reflect the retirement of Terry Planell as a Limited Partner and the transfer of her 3% interest in the Partnership to WHCT Management, Inc., on November 21, 1988, and (vii) confirm the intention and obligation of the Limited Partners to continue to comply with certain limitations and restrictions on their activities as Limited Partners of the Partnership in accordance with policies established by the Federal Communications Commission, hereby agree as follows:

1. Capitalized terms used herein and not herein defined shall have the respective meanings attributed thereto in the Original Agreement.

2. The Original Agreement is hereby amended by deleting therefrom in its entirety Section 4.5 and replacing said Section with the following Section 4.5:

**"Section 4.5 Business Control**

"A. No Limited Partner shall participate in or have any control over the Partnership business, except as required by law. The Limited Partners hereby consent to the exercise by the General Partners of the powers conferred on them by this Agreement and to the employment, when and if in the sole discretion of the General Partners the same is deemed necessary or advisable, of such Persons as the General Partners may determine to be necessary or advisable in connection with the conduct of the Partnership's business. No Limited Partner shall have any authority or right to act for or bind the Partnership.

"B. To the extent not otherwise prohibited by paragraph A above, no Limited Partner shall (i) act as an employee of the Partnership if his or her functions, directly or indirectly, relate to the media enterprises of the Partnership; (ii) serve, in any material capacity, as an independent contractor or agent with respect to the Partnership's media enterprises; (iii) communicate with the Partnership or General Partner on matters

BH 0610

pertaining to the day-to-day operations of its business; (iv) perform any services to the Partnership materially related to its media activities or (v) become actively involved in the management or operation of the media businesses of the Partnership. The foregoing restrictions shall apply to each shareholder, partner or equity participant of any Limited Partner which is not a natural person. Nothing in this Section 4.5.B, however, shall be construed to prohibit any Limited Partner from making loans to, or acting as surety for, the Partnership, providing services to the Partnership as long as such services do not materially relate to the media activities of the Partnership or exercising the rights expressly reserved to such Limited Partner under the Uniform Act or this Original Agreement."

3. The Original Agreement is hereby further amended by substituting Schedule A attached hereto for Schedule A to the Original Agreement.


4. Except to the extent amended hereby, the Original Agreement shall remain in full force and effect.

WITNESS the execution hereof under seal as of this 21st day of November, 1988.

GENERAL PARTNERS:

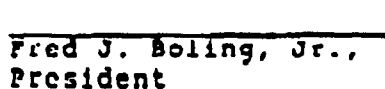
  
Richard P. Ramirez

WHCT MANAGEMENT, INC.

By:   
Richard P. Ramirez  
President

LIMITED PARTNERS:

ASTROLINE COMPANY, INC.

By:   
Fred J. Boling, Jr.,  
President

  
Martha Rose

  
Robert M. Rose

  
Thelma N. Gibbs

pertaining to the day-to-day operations of its business; (iv) perform any services to the Partnership materially related to its media activities or (v) become actively involved in the management or operation of the media businesses of the Partnership. The foregoing restrictions shall apply to each shareholder, partner or equity participant of any Limited Partner which is not a natural person. Nothing in this Section 4.5.B, however, shall be construed to prohibit any Limited Partner from making loans to, or acting as surety for, the Partnership, providing services to the Partnership as long as such services do not materially relate to the media activities of the Partnership or exercising the rights expressly reserved to such Limited Partner under the Uniform Act or this Original Agreement."

3. The Original Agreement is hereby further amended by substituting Schedule A attached hereto for Schedule A to the Original Agreement.

4. Except to the extent amended hereby, the Original Agreement shall remain in full force and effect.

WITNESS the execution hereof under seal as of this 21st day of November, 1988.

GENERAL PARTNERS:

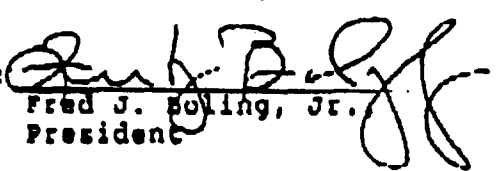
\_\_\_\_\_  
Richard P. Ramirez

WHCT MANAGEMENT, INC.

By: \_\_\_\_\_  
Richard P. Ramirez  
President

LIMITED PARTNERS:

ASTROLINE COMPANY, INC.

By:   
Fred J. Bolling, Jr.  
President

\_\_\_\_\_  
Martha Rose

\_\_\_\_\_  
Robert M. Rose

\_\_\_\_\_  
Thelma N. Gibbs

pertaining to the day-to-day operations of its business; (iv) perform any services to the Partnership materially related to its media activities or (v) become actively involved in the management or operation of the media businesses of the Partnership. The foregoing restrictions shall apply to each shareholder, partner or equity participant of any Limited Partner which is not a natural person. Nothing in this Section 4.5.8, however, shall be construed to prohibit any Limited Partner from making loans to, or acting as surety for, the Partnership, providing services to the Partnership as long as such services do not materially relate to the media activities of the Partnership or exercising the rights expressly reserved to such Limited Partner under the Uniform Act or this Original Agreement."

3. The Original Agreement is hereby further amended by substituting Schedule A attached hereto for Schedule A to the Original Agreement.

4. Except to the extent amended hereby, the Original Agreement shall remain in full force and effect.

WITNESS the execution hereof under seal as of this 21st day of November, 1988.

GENERAL PARTNERS:

Richard P. Ramirez

WHCT MANAGEMENT, INC.

By:

Richard P. Ramirez  
President

LIMITED PARTNERS:

ASTROLINE COMPANY, INC.

By:

Fred J. Boling, Jr.,  
President

Martha Rose  
Martha Rose

Robert M. Rose  
Robert M. Rose

Thelma N. Gibbs  
Thelma N. Gibbs

pertaining to the day-to-day operations of the business; (iv) perform any services to the Partnership materially related to its media activities or (v) become actively involved in the management or operation of the media businesses of the Partnership. The foregoing restrictions shall apply to each shareholder, partner or equity participant of any Limited Partner which is not a natural person. Nothing in this Section 4.5.B, however, shall be construed to prohibit any Limited Partner from making loans to, or acting as surety for, the Partnership, providing services to the Partnership as long as such services do not materially relate to the media activities of the Partnership or exercising the rights expressly reserved to such Limited Partner under the Uniform Act or this Original Agreement."

3. The Original Agreement is hereby further amended by substituting Schedule A attached hereto for Schedule A to the Original Agreement.

4. Except to the extent amended hereby, the Original Agreement shall remain in full force and effect.

WITNESS the execution hereof under seal as of this 21st day of November, 1988.

GENERAL PARTNERS:

\_\_\_\_\_  
Richard P. Ramirez

WHCT MANAGEMENT, INC.

By: \_\_\_\_\_

Richard P. Ramirez  
President

LIMITED PARTNERS:

ASTROLINE COMPANY, INC.

By: \_\_\_\_\_

Fred J. Boling, Jr.,  
President

\_\_\_\_\_  
Martha Rose

\_\_\_\_\_  
Robert M. Rose

  
\_\_\_\_\_  
Thelma N. Gibbs

## ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP

## Schedule A

<u>General Partners</u>	<u>Initial Capital Contribution</u>	<u>Additional Capital Contribution</u>	<u>Future Capital Contribution</u>	<u>Percentage Interest</u>
Richard P. Ramirez c/o Astroline Communications Company Limited Partnership 18 Garden Street Hartford, CT 06103	\$ 210	\$ 0	\$ 0	21%
WHCT Management, Inc. c/o Astroline Communications Company Limited Partnership 18 Garden Street Hartford, CT 06103	\$ 90	\$ 0	\$ 0	9%
<u>Limited Partners</u>				
Astroline Company, Inc. 95 Walkers Brook Drive Reading, MA 01867	\$440,616	\$20,734,969	\$ 0	58%
Martha Rose and Robert Rose as Joint Tenants 18 Morgan Street Venham, MA 01984	\$ 30,042	\$1,526,637	\$ 0	6%
Thelma N. Gibbs 2275 South Ocean Blvd. Palm Beach, FL 33480	\$ 30,042	\$1,526,637	\$ 0	6%

SBH Exh. 65

Astroline

SBH Exh. 65

August 8, 1989

Ed Hayes, Jr., Esquire  
Linda Bocchi, Esquire  
Baker & Hostetler, Attorneys at Law  
1050 Connecticut Avenue, N.W.  
Suite 1100  
Washington, D.C. 20036

13

Dear Ed & Linda:

I have reviewed the memorandum dated August 4, 1989. It serves to raise additional questions.

In a footnote, the pro-forma request for consent to restructure the partnership is referred to with regard to equity interest of the General Partner. However, no mention is made of the proposed (?) re-wording of the partnership agreement which accompanied the effort to transfer all voting equity to Richard P. Ramirez. How does failure to achieve the more critical issue of proper insulation between general and limited partners affect the minority integration? Would not failure to achieve the proposed partnership amendment on insulation between generals and limited cause substantial dilution of the Minority General Partner, and consequently serve to harm the value of a Minority partner in day-to-day operations?

If the FCC were to open a new window for the filing of applications, will Astroline be permitted to alter or adjust the ownership at that point? If so, can additional general and limited partners be introduced? In the case of a new window, does Richard P. Ramirez need to be present at TV18 once the hearings begin, or need only promise to be an active day-to-day manager of the station should he/Astroline prevail with the license in the future?

I would appreciate you clarifying these questions as soon as possible as I feel they will effect our choice of action relative to seeking Certiorari.

Sincerely,

  
Richard P. Ramirez  
Managing General Partner  
Astroline Communications Co.

RPR/sil  
cc: T. Gugliotti

BH 0558

Federal Communications Commission

Docket # \_\_\_\_\_

Presented by Shuberg Broadcasting

Disposition 65

Reporter Greer

Date 9-23-98

Identified X

Received 9-24-98

Rejected Holmes

**SBH Exh. 66**

**Collier, Shannon, Rill & Scott**  
**Attorneys-at-Law**

1055 Thomas Jefferson Street, N. W.  
 Washington, D. C. 20007

Telephone: (802) 342-8400

Telex: 440665 CSRS UT

Writer's Direct Dial Number

(202) 342-8470

June 12, 1984

Robert A. Collier  
 Thomas F. Shannon  
 James F. Rill  
 William W. Scott  
 David A. Hartquist  
 James M. Nicholson  
 Richard E. Schwartz  
 Richard S. Silverman  
 R. Timothy Columbus  
 Lauren E. Howard  
 Paul D. Cullen  
 Kathleen E. McDermott  
 R. Sarah Compton  
 Steven Schears  
 Mark L. Austrian  
 Norman G. Knopf  
 William D. Appier  
 Jeffrey W. King

John B. Williams  
 Paul C. Rosenthal  
 Ralph A. Mittelberger  
 Thomas J. Hamilton  
 Jeffrey L. Letter  
 Robert L. Meuser  
 Thomas A. Hart, Jr.  
 Michael R. Kerabow  
 Jeffrey S. Beckington  
 Michele A. Giustiana  
 David P. Hackett  
 Judith L. Oldham  
 Jeanne M. Forch  
 Laurence J. Laeoff  
 Christopher J. MacAvoy  
 Donald J. Patterson, Jr.  
 Randall J. Bramer  
 Kevin F. Hartley

Walter Flowers  
 William F. Fox, Jr.  
 Don Bailey  
 Of Counsel

VIA FEDERAL EXPRESS

Edward L. Masry, Esquire  
 15495 Ventura Boulevard  
 Sherman Oaks, CA 91403

Dear Ed:

Enclosed please find a proposed Petition for Special Relief to be filed with the Federal Communications Commission on behalf of Faith Center, Inc. I encourage you to thoroughly review this Petition and make any changes that you feel are necessary.

Pursuant to our telephone conversation, I am in the process of drafting a Motion for Expedited Processing which I will execute and initial on your behalf. I suggest that we file this Motion along with the Petition for Special Relief. I am also in the process of preparing a Transfer Agreement (FCC Form 314) to be filed simultaneously with the Petition for Special Relief.

Please contact me upon receipt of this package so that we may discuss the above matters in greater detail.

Sincerely,

*Thomas*  
 Thomas A. Hart, Jr.

Enclosure

cc: Mr. Fred J. Boling, Jr.  
 (w/encl.)

TAH/tdh

see p. 4

Federal Communications Commission

Date: \_\_\_\_\_  
Present: \_\_\_\_\_  
Disposition: \_\_\_\_\_

Exhibit: Shubert Broadcasting 46

Identified \_\_\_\_\_  
Received \_\_\_\_\_  
Rejected \_\_\_\_\_

Reporter: George Helms  
Date: 9-23-49

Before the  
Federal Communications Commission  
Washington, D. C. 20554

In Re Application of	)	
	)	
FAITH CENTER, INC.	)	BC Docket No. 80-730
WHCT-TV	)	File No. BRCT-348
Hartford, Connecticut	)	
	)	
For Renewal of License	)	

PETITION FOR SPECIAL RELIEF

Faith Center, Inc. ("Faith"), by its attorneys, hereby requests that the Federal Communications Commission ("Commission") suspend the pending renewal hearing and grant permission for a distress sale of the assets of WHCT-TV, Channel 18, Hartford, Connecticut to Astroline Communications Company Limited Partnership ("Astroline Communications Company") pursuant to the Commission's Statement of Policy on Minority Ownership of Broadcasting Facilities, 42 RR 2d 1689 (1978), as revised, 52 RR 2d 1301 (1982).

HISTORY OF PROCEEDING

The history of this proceeding is a lengthy one and a matter of record at the Commission. Highlighted below is a brief summary of the proceedings.

1. Faith's renewal application was designated for hearing on December 1, 1980. In Re Application of Faith Center, Inc., 83 FCC 2d 401 (1980). At issue were Faith's basic qualifications to remain the licensee of WHCT-TV. To avoid the hearing expense and possible loss of license, Faith petitioned the Commission and was ultimately granted permission to have a distress sale for the assets of Channel 18.

2. In 1981, Faith first attempted to assign WHCT to the Television Corporation of Hartford ("TCH") under the Commission's distress sale policy. (FCC 81-544, Dec. 23, 1981). However, the transaction was never consummated because of problems with TCH's application and financial qualifications. (Mimeo 3492, April 16, 1982).

3. A second distress sale of WHCT was attempted by Faith on September 27, 1982 when Faith entered into a Purchase Agreement with Interstate Media Corporation ("IMC"). Pursuant to the agreement, Faith agreed to assign WHCT's license and other assets to IMC in accordance with the Commission's distress sale policy. (FCC 80-730, Sept. 29, 1982). The distress sale between Faith and IMC was never consummated, and, ultimately, the case was returned to hearing status.

4. On May 29, 1984, Astroline Communications Company entered into an agreement with Faith to purchase the license and assets of WHCT for \$3,100,000 in accordance with the Commission's distress sale policy. The agreement was the culmination of two weeks of negotiations between counsel for Astroline Communications Company and Faith. Prior to entering formal negotiations, Faith required Astroline Communications Company to establish its financial qualifications. A letter was sent to Faith by the First National Bank of Boston which described Astroline Communications Company's ability to consummate the proposed transaction which involves a cash payment of \$500,000 at closing and a note issued by Faith for \$2.6

million for ten years at a fixed interest rate of twelve percent (12%) per annum.

DESCRIPTION OF THE PURCHASER

1. Astroline Communications Company is a Massachusetts limited partnership comprised of two General Partners and one Limited Partner.

A. Richard P. Ramirez, a Hispanic-American and experienced broadcaster, is a General Partner of Astroline Communications Company. He holds a twenty-one percent (21%) partnership interest in the limited partnership and will be the General Manager of the television station.

B. WHCT Management, Inc. ("WHCT Management") is a corporation duly organized under the laws of the State of Massachusetts and is also a General Partner in Astroline Communications Company. Presently, WHCT Management holds a nine percent (9%) partnership interest in the limited partnership. If, however, the Commission approves the proposed distress sale, WHCT Management will transfer four percent (4%), or four-ninths (4/9), of its nine percent (9%) interest in the partnership to additional minority personnel, preferably Blacks who will be involved in the day-to-day operation of the television station. Thus, pursuant to that transfer, the total minority equity interest in the partnership will be twenty-five percent (25%), with minorities controlling the station's daily operation.

C. The remaining partner in Astroline Communications Company is Astroline Company, a Massachusetts

limited partnership. Astroline Company holds a seventy percent (70%) limited partnership interest in Astroline Communications Company and will not control the day-to-day operation of the station.

2. The chart set forth below describes each partner's financial interest and managerial control of Astroline Communications Company:

Richard P. Ramirez (21%)	General Partner	General Manager Full Operational Control
WHCT Management, Inc. (9%)*	General Partner	Limited Operational Control
Astroline Company (70%)	Limited Partner	No Operational Control

*Sign check -  
exist -  
accounting*

\*/ WHCT Management, Inc. will transfer four percent (4%) of its nine percent (9%) interest to minority personnel, if the Commission approves the distress sale of WHCT to Astroline Communications Company.

3. Astroline Communications Company is a qualified minority purchaser as defined by the Commission's Statement of Policy on Minority Ownership of Broadcasting Facilities, 42 RR 2d 1689 (1978), as revised, 52 RR 2d 1301 (1982).

[W]here the general partner is a minority individual and owns more than a 20 percent interest in the broadcasting entity, there exists sufficient minority involvement to justify favorable application of the Commission's . . . distress sale policies.

Id. at 1305-06.

In accordance with the Commission's Policy Statement, the twenty-one percent (21%) interest in Astroline Communications Company held by Mr. Ramirez and his status as the

General Manager surpasses the Commission's minimum standards. Additionally, minority ownership and control of Astroline Communications Company will increase when WHCT Management transfers four percent (4%) of its nine percent (9%) interest to additional minority personnel that will be interviewed and hired within 90 days following the consummation of the proposed distress sale. Thus, Astroline Communications Company is a qualified minority purchaser as defined by the Commission because the total minority interest and control in Astroline Communications Company will be twenty-five percent (25%).

APPRAISAL PRICE

The Commission established that a distress sale price may not exceed seventy-five percent (75%) of the station's fair market value. Lee Broadcasting Corp., 76 FCC 2d 462 (1980). The appraisals presently on file with the Commission for WHCT-TV fully support the terms of the proposed distress sale and reflect that the consideration is well below the required seventy-five percent (75%) of the fair market value of the station. The appraised value of the license and other assets of WHCT and the ratio between the purchase price (\$3,100,000) and the appraised values are as follows:

<u>Appraiser</u>	<u>Appraisal</u>	<u>Ratio</u>
LaRue	\$9,000,000	34%
Chapman	\$5,500,000	56%
Frazier	\$7,000,000	44%

The average fair market value of the three appraisals is \$7,166,667. The \$3,100,000 purchase price is forty-three percent (43%) of this figure. Thus, Faith has complied with the Commission's Rules by transferring its television station for less than seventy-five percent (75%) of the fair market value.

By this filing and the other records of this proceeding that are on file at the Commission and incorporated by reference herein, Faith submits simultaneously a full disclosure of all the facts and circumstances bearing on this request, comparable to that provided for in § 73.3525(a) of the Commission's Rules.

WHEREFORE, Faith respectfully requests the Commission to:

1. renew the license of Faith for the television station WHCT-TV operating on Channel 18, Hartford, Connecticut;
2. grant the instant Petition for Special Relief;
3. grant the assignment application of the license and other assets of WHCT to Astroline Communications Company filed simultaneously herewith; and
4. terminate this proceeding.

Respectfully submitted,

FAITH CENTER, INC.

---

Edward L. Masry  
General Counsel

**SBH Ext. 67**

**PEABODY & BROWN**  
 A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
 ONE BOSTON PLACE  
 BOSTON, MASSACHUSETTS 02108  
 (617) 723-8700

CABLE ADDRESS: PEABODYB  
 TELEX NUMBER 95109

## M E M O R A N D U M

RECEIVED

DEC 26 1984

CSR &amp; S

TO: Distribution List  
 FROM: Carter S. Bacon, Jr.  
 DATE: December 21, 1984

Accompanying this Memorandum are revised checklists of matters requiring attention in connection with the closing of the Channel 18 acquisition. Also included is a draft Closing Agenda showing the actual documents which would be executed and delivered at the closing.

Please let me know of changes and additions to the enclosed checklists. I will keep them updated and will circulate revised copies as appropriate.

CSB/aa  
 Enclosures

Distribution List:

Herbert A. Sostek  
 Fred J. Boling, Jr.  
 Richard P. Ramirez  
 Mark Oland  
 Thomas A. Hart, Jr.  
 William C. Lance

Federal Communications Commission	
Docket	Exhibit
Presented	Shurberg
Disposition	Identified
Reporter	Received
Date	Rejected
	George Holmes
	9-23-98
	67
	Broadcasting
	9-28-98

RC 006167

0000435

PBS 000669

ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP  
ACQUISITION OF WHCT-TVMatters Requiring Attention Prior to Closing  
in Connection with Transfers of Assets

<u>Description</u>	<u>Responsibility</u>	<u>Deadline</u>
Review transfers to assure compliance with applicable Connecticut laws.	MO	
Settle closing issues with Seller and obtain approval from Seller of forms of documents.	TAH	1/1
Obtain appropriate casualty and liability insurance covering the Assets.	FJB/MO	
Prepare form of press release.		1/16

ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP  
ACQUISITION OF WHCT-TVMatters Requiring Attention Prior to Closing  
in connection with Payment of Purchase Price

<u>Description</u>	<u>Responsibility</u>	<u>Deadline</u>
Prepare form of Promissory Note.	CSB	1/21
Arrange deposit of \$30,000 escrow payment pursuant to Section 2(c) of the Purchase and Sale Agreement.	FJB	
Arrange with bank(s) for delivery of cash at Closing.	FJB	
Prepare form of Receipt acknowledging payment of purchase price.	CSB	1/16
Prepare schedule setting forth allocation of purchase price among the Assets.	Roger Eastman	
Settle closing issues with Seller and obtain approval from Seller of forms of documents.	TAH	

ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP  
ACQUISITION OF WHCT-TV

Closing Agenda

Delivery by Seller of Bill of Sale.

Delivery by Seller of Deed.

Delivery by Seller of documents  
clearing title to real property  
of all encumbrances except tax  
liens.

Delivery by Seller of documents  
removing all encumbrances on  
personal property except tax liens.

Delivery of Opinion of Seller's counsel.

Transfer of funds by Buyer to Seller.  
Delivery of Receipt by Seller.

Delivery by Buyer of Promissory Note.

Delivery by Buyer of Mortgage.

Record Deed and Mortgage; pay recording  
fees and taxes.

Post Closing Items

Press Release.

Deliver Notice of Closing to FCC.

ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP  
ACQUISITION OF WHCT-TV

Matters Requiring Attention Prior to Closing  
in Connection with Transfers of Assets

<u>Description</u>	<u>Responsibility</u>	<u>Deadline</u>
Obtain survey of real property.	MO	
Obtain definitive legal description of real property.	MO	
Obtain title insurance policy.	MO	1/1
Examine title to real property.	MO	1/1
Prepare definitive list of tax liens and creditors' liens on real property.	MO	12/21
Prepare form of Deed and deliver to TAH.	MO	12/21
Prepare form of Mortgage and deliver to TAH.	MO	12/21
Settle amounts of recording fees and transfer taxes.		1/1
Arrange payment of recording fees and transfer taxes.	MO	
Perform physical inspection of Assets and prepare definitive description of personal property.	RPR	1/16
Perform Conn. UCC search.	MO	1/1
Prepare definitive list of tax liens and creditors' liens on personal property.		1/1
Prepare form of Bill of Sale and deliver to TAH.	CSB	1/20

0000439



ASTROLINE COMMUNICATIONS COMPANY LIMITED PARTNERSHIP  
ACQUISITION OF WHCT-TV

Questions to be Settled with Seller Prior to Closing

<u>Description</u>	<u>Responsibility</u>	<u>Deadline</u>
Agree upon date of closing (30 days after lifting of stay).	TAH	
Confirm compliance by Buyer with obligation to demonstrate financial qualifications pursuant to Section 9 of the Purchase and Sale Agreement.	TAH	
Confirm with Seller manner of depositing \$30,000 in escrow.	TAH	
Obtain instructions from Seller re transfer of funds to Seller at closing.	TAH	
Obtain approval of forms of Deed, Note, Bill of Sale and Mortgage.	TAH	
Agree upon opinion from Seller's counsel re authority of Rev. Scott to execute documents.	TAH	
Prepare draft of letter from Seller's counsel re the foregoing items.	CSB	12/21
Settle manner of satisfaction of creditors' liens prior to or at closing.	TAH	
Prepare draft of letter from Seller's counsel confirming manner of satisfaction of liens at closing.	MO	

SBH Exh. 68

**PEABODY & BROWN**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
ONE BOSTON PLACE  
BOSTON, MASSACHUSETTS 02108  
(617) 723-8700

CABLE ADDRESS "PEABODYB"  
TELEX NUMBER 951019

April 9, 1985

Thomas A. Hart, Jr.  
Baker & Hostetler  
818 Connecticut Avenue N.W.  
Washington, D.C. 20006

Dear Tom:

I am writing in order to give you my comments on the FCC Form 323 which was filed on behalf of Astroline Communications Company Limited Partnership ("ACC") on February 22, 1985. The Form consists of three pages of information regarding ACC and an instruction page and includes two exhibits: Exhibit 1 is a separate Form 323 for WHCT Management, Inc. ("WHCT"); and Exhibit 2 is a statement setting forth certain information regarding the general and limited partners of ACC. In addition, the Form includes three attachments: Attachment 1 is a copy of the ACC Limited Partnership Agreement, Attachment 2 is a copy of the WHCT By-Laws and Attachment 3 is a copy of the WHCT Articles of Organization.

I have the following comments:

Question 2 on Form 323 requests the "name of any corporation or other entity having a direct or indirect ownership interest in the licensee ... ." In response, the Form provides the name of WHCT and refers to Exhibit 1. Since Astroline Company is clearly an entity which has both a direct and indirect ownership interest in the licensee, its name should be included in response to Question 2. I do not know whether the individual partners of Astroline Company must be identified here under applicable FCC regulations, but it seems logical that they should be included as "entities" with ownership interests and that the Astroline Company Limited Partnership Agreement should be included as an Attachment.

Exhibit 1, the separate Form 323 for WHCT, appears to have been filed in response to instruction 4 of Form 323 which requires that "a separate Form 323 should be submitted to report changes in the officers, directors or stockholders of" a corporation which either controls the licensee or has a 25% or greater ownership interest in the licensee. Since WHCT does not either control ACC or have a 25% equity interest in it, the filing of the Form 323

**Federal Communications Commission**

Docket No. Shubert Broadcasting

Presented by George Holmes

Disposition Identified

Received 9-28-98

Reported George Holmes

Date 9-23-98

PEABODY & BROWN

Thomas A. Hart, Jr.  
April 9, 1985  
Page Two


seems unnecessary and leaves the record ambiguous as to the real control of ACC. Attachments 3 and 4, consisting of the WHCT By-Laws and Articles of Organization which appeared to have been filed in response to Question 6 of the WHCT Form 323, also seem unnecessary since they do not relate to the control of ACC. Finally, on page 3 of the Form 323 filed on behalf of WHCT, it is stated that Herbert A. Sostek and Fred J. Boling, Jr. are general partners of Astroline Company and they are authorized to vote the stock of WHCT. I don't understand why this sentence is included. In fact, Joel A. Gibbs and Richard H. Gibbs are also general partners of Astroline Company, and although general partners have the authority under the Partnership Agreement and the Uniform Limited Partnership Act to bind Astroline in dealings with third parties, none of the General Partners has any express authority to vote the stock of WHCT.

If in fact, WHCT is deemed to control ACC (which goes against everything we've put before the FCC to date), instruction 4 still only requires a separate Form 323 when there are "changes in the officers, directors or stockholders of" a corporation which controls a licensee. It does not seem to me that the issuance of stock by WHCT to Astroline Company at the time of its organization constituted a "change" in stockholders which would require that WHCT file a Form 323. However, if this is the practice, a Form 323 should be filed for Astroline Company on the theory that Astroline Company, while not a corporation, is still a separate entity with a 25% or greater ownership interest in Astroline Company.

I think that the regulations on the points raised above should be carefully reviewed and a determination made as to the exact amount of disclosure which is required regarding ACC, its direct and indirect owners. Following such a review, an amended Form 323 should be filed after it has been reviewed by everyone concerned.

Please do not hesitate to call me should you have any questions regarding this letter or if I can be of assistance in preparing the amendment to Form 323.

Cordially,

  
Carter S. Bacon, Jr.

CSB/aa

SBH Ext. 69

## BAKER &amp; HOSTETLER #55

ATTORNEYS AT LAW

WASHINGTON SQUARE, SUITE 1100

1050 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20036

(202) 661-1500

TELECOPIER (202) 466-2387

TELEX 650-235-7276

IN CLEVELAND, OHIO  
3200 NATIONAL CITY CENTER  
CLEVELAND, OHIO 44114  
(216) 821-0200  
TWX 810 421 8375

IN COLUMBUS, OHIO  
65 EAST STATE STREET  
COLUMBUS, OHIO 43215  
(614) 228-1841

IN DENVER, COLORADO  
SUITE 1100, 303 EAST 17TH AVENUE  
DENVER, COLORADO 80203  
(303) 861-0600

IN ORLANDO, FLORIDA  
13TH FLOOR BARNETT PLAZA  
ORLANDO, FLORIDA 32801  
(305) 861-1111

May 23, 1985

WRITER'S DIRECT DIAL NO.:

(202) 661-1658

VIA FEDERAL EXPRESS

Mr. Richard P. Ramirez  
General Partner  
Astroline Communications Company  
18 Garden Street  
Hartford, CT 06105

Dear Rich:

Pursuant to our telephone conversation yesterday, enclosed please find the following documents:

1. a draft of Astroline Communications Company Limited Partnership's ("ACC") brief, as an intervenor, in Shurberg Broadcasting of Hartford, Inc. v. Federal Communications Commission, 84-1600 (D.C. Cir. 1985);
2. a Memorandum Opinion and Order (released May 21, 1985) regarding Arch Communications, Inc.'s request to use WTIC-TV call letters for Channel 61 in Hartford, Connecticut; and
3. a Motion for Extension of Time for ACC's Opposition to the Motion to Dismiss filed by The Neighbors concerning ACC's modification permit application.

Once you have had an opportunity to review the enclosed documents, please give me a call. I will be in Washington, D.C. all weekend and can be reached either in the office or at home. I am looking forward to seeing you on the 29th. In the meantime, I remain,

Sincerely,



Thomas A. Hart, Jr.

Enclosures  
TAH/tdh

Federal Communications Commission	
Docket No.	Shurberg Broadcasting
Presented	Exhibit 69
Disposition	X
Reporter	9-29-98
Date	9-23-98
Identified	Received
Rejected	Holmes

5/24/85

I. SBH HAD NO RIGHT TO COMPARATIVE CONSIDERATION  
WITH FAITH CENTER.

SBH's claim is founded on the premise that, under Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945), it had an absolute statutory right to a comparative hearing against Faith Center. SBH has no such right. SBH's application arrived in the middle of a properly initiated non-comparative renewal proceeding for the purpose of determining whether Faith Center was qualified to hold the license for WHCT-TV. The absence of any "window" for competing applications on December 2, 1983, the date SBH filed its application, rests on the Commission's interpretation of its own procedural orders -- an interpretation that this court has repeatedly held deserves judicial deference.

A. Faith Center's ongoing non-comparative  
renewal and distress sale proceeding  
complied in all respects with the FCC's  
specific procedures regulating renewal  
proceedings.

The FCC, pursuant to the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. §§ 151 et seq (1982), has provided specific procedures for processing renewal applications. A licensee must file a renewal application "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed . . . ." 47 C.F.R. §73.3539(a) (1984). An application for a new broadcast station license which is mutually exclusive with an application for renewal of an existing station must be filed by the end of the first day of the last full calendar month of the expiring license term. 47 C.F.R. §73.3516(e) (1984). Section 73.3516(e) of the Commission's Rules is referred to as the "cut-

off" rule. See City of Angels Broadcasting, Inc. v. FCC, 745 F.2d 656, 662 (D.C. Cir. 1984). The cut-off rule provides for only a three-month "window" during which competing applications may be filed against renewal applications and prohibits acceptance of mutually exclusive applications at any other time.<sup>1/</sup>

No "window" opens, however, when a licensee is involved in renewal hearings, because the licensee is not required to file a renewal application until the hearing is terminated.

It has been long standing Commission policy that, when an application for renewal of license is designated for hearing, the applicant is not required to file another renewal application for the station until completion of the hearing and the issuance of a final decision on the application . . .

Committee for Open Media v. FCC, 543 F.2d 861, 864 n.15 (D.C. Cir. 1976), citing Chronicle Broadcasting Co., 41 F.C.C. 2d 14 (1973). Although protracted proceedings may indirectly result in extending a license beyond its normal expiration date, such consequences are anticipated by the Communications Act. 47 U.S.C. §307(c) (1983). The only time restriction imposed by the Communications Act is a limitation upon the period for which the Commission itself may grant a license. Id. Courts have consistently

---

<sup>1/</sup> "The cut-off rule basically serves two purposes. First, it advances the interest of administrative finality: 'There must be some point in time when the Commission can close the door to new parties to a competitive hearing or, at least hypothetically, no licenses could ever be granted.' Second, it aids timely broadcast applicants by granting them a 'protected status' that allows them to prepare for what often will be an expensive and time-consuming contest, fully aware of the competitors they will be facing." Id. at 663 (citations omitted).

held that this limitation is on the Commission's award of a license and not on the duration of the licensing proceeding itself, for:

'[p]ending any hearing and final decision on' a renewal application 'and the disposition of any petition for hearing . . . the Commission shall continue such license in effect' - obviously, beyond the maximum . . . term for which the Commission could award it, if necessary. Thus Congress made specific provision for licenses involved in the renewal process, and unambiguously decreed that they be maintained in operation until 'final decision' on the question of renewal.

. . . Moreover, [Section 307(c)] requires licensees to file renewal applications only '[u]pon the expiration of [a] license.'

Committee for Open Media v. FCC, 543 F.2d at 866-67 (quoting 47 U.S.C. §307(c)).

In 1980, when Faith Center's license came due for renewal, the Commission designated its license for a non-comparative renewal hearing, thus obviating the need for Faith Center to file a supplemental renewal application until the hearing was resolved. At the same time, the Commission authorized Faith Center to seek a qualified minority purchaser to whom its license could be assigned under the terms of the Commission's distress sale policy. In re Application of Faith Center, Inc., 83 F.C.C.2d 401 (1980); Statement of Policy on Minority Ownership of Broadcast Facilities, 68 F.C.C.2d 979 (1978). Unless the Commission terminated the renewal hearing and required Faith Center to file a supplemental renewal application, no "window" for competing applications would open in the normal course of the proceeding, as that course is defined by the Communications Act and this Court's decision in Committee for Open Media. There was thus no

"window" open for competing applicants when SBH filed its application on December 2, 1983, and SBH had no statutory right under Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945) to transform the noncomparative hearing then in progress into a comparative hearing.

- B. SBH's arguments that a "window" for competing applicants opened in December 1983 are groundless.

Through an ingenious -- but spurious -- argument, SBH attempts to bootstrap its way into the status of a comparative applicant with full statutory Ashbacker rights. This argument is not identified as such in SBH's brief; rather, SBH's pivotal assertion is imbedded in SBH's description of what it calls "The Administrative Background." SBH Br. 4.

On September 30, 1983, the Commission authorized the second of Faith Center's three attempts at a distress sale, to Interstate Media Corporation ("IMC"). In re Application of Faith Center, Inc., 54 Rad. Reg. (P&F)2d 1286 (1983). In approving that distress sale, the Commission pronounced the proceeding "terminated" (id. at 1290) but subject to two conditions subsequent, both of which were essential:

[W]e shall grant Faith's current Petition for Special Relief, subject to the conditions that IMC is found fully qualified to be a Commission licensee as a result of the Mass Media Bureau's review of the assignment application, and that the contemplated assignment is in fact consummated within 90 days of the Bureau's grant of the assignment application becoming final. Should either of these conditions not be met, this proceeding will return to its status prior to the filing of Faith's Petition for Special Relief.

Id. at 1290 (emphasis added). Seizing on the word "terminated," and ignoring the fact that the conditions subsequent were not fulfilled -- IMC did not complete the assignment -- SBH asserts:

The "window" for competing applications for Connecticut broadcast licensees opened on December 1, 1983. As of that date the Faith Center/IMC application was still pending, and the Station WHCT-TV "hearing" had been terminated. SBH filed its competing application on December 2, 1983, with the understanding that it would be entitled to comparative consideration against Faith Center or IMC, as well as any other applicant which might file during the three-month "open window" period.

SBH Br. 5-6.

But contrary to SBH's claim, the hearing had not been "terminated" and no window opened to receive its application. In its Clarification of Distress Sale Policy in October 1978 ("Clarification"), 44 Rad. Reg. (P&F) 2d 479 (1978), the Commission expressly anticipated that assignments pursuant to this policy would not always be achieved: "In the event a licensee's exploration of (or application for) distress sale relief is unsuccessful, . . ., the suspended qualification hearing will be resumed." Id. at 480, n.2 (emphasis added). At no point in a distress sale proceeding, however, is the hearing status of an applicant's renewal application terminated in order to open the door to competing applicants. If the Commission's conditional grant of authority to assign a license pursuant to the distress sale policy could have the effect of opening the door to competing applicants pending the outcome of the conditions to the grant, the possibility recognized by the Commission of resuming the basic qualifications hearing if the proposed sale is unsuccessful would be foreclosed.

Once a renewal application is designated for a non-comparative hearing on basic qualifications issues and a distress sale is authorized, the proceeding is simply suspended -- not terminated -- until the distress sale proceeding is completed or the hearing is resumed and a resolution of the issues designated in that proceeding is reached. See Clarification at 480. Therefore, when SBH filed its application, Faith Center's renewal application for that broadcast facility was still in hearing status, with no window for competing applications, pending the outcome of the conditions to the September 30, 1983 authorization for assignment of the license through a distress sale.

Having staked its claim to a nonexistent "window" in which it filed its application, SBH then maintains that the pendency of the Faith Center renewal proceeding could not empower the Commission to reject SBH's application. SBH places tremendous emphasis on the fact that the Commission never reached the merits of Faith Center's renewal application. SBH Br. 18-21. SBH argues in essence that the Commission could not exclude SBH from the proceeding unless actual hearing activity were underway directed at the merits of Faith Center's license renewal. SBH's argument is erroneous for two reasons.

First, SBH's argument is circular. By the express terms of the Commission's distress sale procedure, the distress sale option is available only to licensees who are not yet involved in renewal hearings. "[W]e will permit licensees whose licenses have been designated for revocation hearing, or whose renewal applications have been designated for hearing on basic qualification issues, but before the hearing is initiated, to

transfer or assign their licenses at a 'distress sale' price to applicants with a significant minority ownership interest. . .". Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C.2d 979, 983 (1978) (emphasis added; footnote omitted). The Commission restricts the distress sale program to licensees not yet involved in renewal hearings for strong reasons of policy that have been summarized by this Court:

The imposition of this limitation on the exception's availability will prevent a licensee from proceeding into the hearings, evaluating the evidence against him, and deciding on that basis whether to seek out a minority purchaser. In this manner the Commission believes that its goal of increased minority ownership can be promoted at a minimum cost to deterrence.

Stereo Broadcasters, Inc. v. FCC, 652 F.2d 1026, 1028 (D.C. Cir. 1981). SBH's argument is thus perfectly circular: if a renewal hearing on the merits had commenced, Faith Center would never have been eligible for the distress sale program in the first place.

Second, there was plenty of activity in the Faith Center docket, all of it directed at Faith Center's attempts to effect an acceptable and feasible distress sale. SBH never explains (nor can it) why a renewal hearing on the merits should permit the Commission to exclude competing applicants while an active distress sale proceeding (in SBH's view) counts for nothing.<sup>2/</sup> In fact, the Commission and its staff closely

---

<sup>2/</sup> SBH asserts that "[t]his is not . . . a situation where the incumbent licensee has been struggling for years to demonstrate its qualifications to the Commission . . . ." SBH Br. 19. But this manifestly is a situation in which the licensee "has been struggling for years" to complete a distress sale. SBH does not explain why one such proceeding can be protected from latecomers but the other cannot.

supervised Faith Center's attempts to achieve a distress sale throughout the proceeding. [record references] It is simply untenable for SBH to maintain that competing applicants cannot intrude on an active renewal hearing, but that applicants can intrude on an active distress sale proceeding at will.

Finally, SBH unfairly attempts to tar the Commission with the charge of being hostile to competing license applicants. In fact, SBH itself was a latecomer to a proceeding in which -- despite ample opportunity -- no competing applicants had shown the slightest interest. Faith Center's last previous license application had been filed in 1977; no competing applicant filed against its renewal application. In 1980, when Faith Center's license again came due for renewal, the Commission solicited comments from the public as to the appropriate disposition of Faith Center's WHCT-TV license. [citation] Although comments were submitted, no one -- including SBH and its owner, Mr. Alan Shurberg -- expressed an interest in filing a competing application for the frequency. The Commission then commenced its non-comparative renewal proceeding and authorized Faith Center to seek a distress purchaser. Two such purchasers came forward, in 1981 and 1982, but no one -- again including SBH or Mr. Shurberg -- sought to interject a competing application. Only in December 1983, after any reasonable person would have concluded that there was no interest in a comparative proceeding, did SBH appear with its competing application. SBH and any other potential competing applicants had ample opportunity long before to make their wishes known to the Commission; they did not do so.

- C. The FCC acted within its administrative discretion in continuing Faith Center's non-comparative renewal proceeding pending consummation of its distress sale to Astroline.

The FCC has wide discretion in designing its own procedures. City of Angels Broadcasting, Inc. v. FCC, 745 F.2d 656, 664 (D.C. Cir. 1984).<sup>3/</sup> "Section 4(j) of the Communications Act of 1934, 47 U.S.C. § 154(j), proclaims that the FCC 'may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.'" Id.

In City of Angels, this Court upheld the FCC's denial of an applicant's request to intervene in an ongoing comparative proceeding. Much like SBH in this case, the applicant requested to have its mutually exclusive application accepted and given comparative consideration along with other comparative applicants even though it was filed long after the "window" for filing competing applications had closed. Yet, in contending that its 1983 application should have been accepted for filing, SBH goes even farther than the applicant in City of Angels -- not only does SBH request to have its untimely application accepted, it contends that an ongoing non-comparative proceeding should thereby be transformed into a comparative proceeding so that SBH could be given comparative consideration.

---

<sup>3/</sup> See e.g., MCI Telecommunications Corp. v. FCC, 712 F.2d 517, 533 (D.C. Cir. 1983); Western Union Telegraph Co. v. FCC, 665 F.2d 1112, 1121, & n.13 (D.C. Cir. 1981); Nader v. FCC, 520 F.2d 182, 195-97 (D.C. Cir. 1975).

SBH's argument would require this Court to overturn the FCC's interpretation of its own September 30, 1983 order, and to find that it committed reversible error in not opening a "window" for filing against Faith Center. In its Memorandum Opinion and Order ("MO&O") under review in this case, the Commission clearly interpreted its prior order of September 30, 1983, explaining that Faith Center's renewal had not been granted, but that it was only granted conditionally, pending consummation of a distress sale. MO&O at 3. The Commission stated: "There was no requirement that Faith file a renewal application for the period of 1984 through 1989, since Faith's 1977 renewal application was and remains in hearing status and competing applications cannot be filed until the proceeding has been terminated." Id.

This court's review of the Commission's construction of its own prior order is limited. The court may not overturn an agency's interpretation unless there are compelling indications that it is wrong. City of Angels, 745 F.2d at 661. Whether there may be other reasonable interpretations of an order in addition to that expressed by the Commission is irrelevant. This court should only examine whether the Commission's interpretation was reasonable under the circumstances. If it was, then the Commission's interpretation should be upheld. See also Tele-Media Corp. v. FCC, 697 F.2d 402, 420 (D.C. Cir. 1983).

If the Commission's own interpretation of its order is upheld, as it should be, then Faith Center's renewal proceeding was a non-comparative proceeding from its inception. Whether to

transform it into a comparative proceeding was a decision left to the discretion of the Commission which, for the reasons fully explained infra, denied SBH's request.

II. THE COMMISSION'S ORDER IS CONSISTENT WITH THIS COURT'S DECISION IN NEW SOUTH MEDIA.

SBH contends that this Court's decision in New South Media Corp. v. FCC, 685 F.2d 708 (D.C. Cir. 1982) deprived the Commission of the discretion to do anything except halt the Faith Center distress sale proceeding and commence a comparative proceeding whose only participants would be SBH and Faith Center.<sup>4/</sup>

---

<sup>4/</sup> "The Commission cannot seriously argue that . . . New South Media did not compel it to accept and consider SBH's application in a consolidated comparative hearing with that of Faith Center." SBH Br. 22. "[T]he Commission would again ignore SBH's right to sole comparative status as against Faith Center . . ." SBH Br. 46 (all emphasis added).

To the contrary, the Commission chose a course of action that was entirely consistent with the New South Media decision, and SBH's reliance on that case is misplaced.

In New South Media, the Commission reopened prior license renewals for thirteen RKO broadcast stations, and proposed to adjudicate RKO's qualifications to retain its licenses in a single noncomparative renewal proceeding. All competing applicants for the thirteen licenses would be kept at bay until the noncomparative proceeding ran its course, whenever that might be. "The Commission has placed a freeze on their [competing] applications, and it is unclear when the freeze would thaw." 685 F.2d at 717. This Court reversed the Commission because it had "not adequately accounted for an action destined to prolong by months and in some cases even years licensee RKO's immunity from competitive challenge and comparative evaluation." Id. at 715.

The differences between the case under review and New South Media are far more significant than any similarities. First, at the most elementary level, this case does not involve an indeterminate freeze on competing applications. Faith Center had been unable to consummate two previous distress sale proposals, and the Commission ruled that if the assignment to Astroline also failed, Faith Center would be promptly required to file a supplemental renewal application, thus opening the way for

---

(footnote continued)

again ignore SBH's right to sole comparative status as against Faith Center . . . ." SBH Br. 46 (all emphasis added).

any competitor who wished to file an application. MO&O at 6. The Commission's order thus had two possible outcomes, both of which would have activated the normal comparative hearing process -- immediately (if the Astroline assignment fell through) or on the ordinary three-year cycle (if Astroline consummated the purchase). In no event would the Faith Center license have been relegated to the indefinite limbo that this Court found unacceptable in New South Media.

Second, a distress sale proceeding is a bona fide renewal proceeding. A successful distress sale proceeding results in the renewal of the license in question, not for the incumbent's own use but solely for the purpose of assigning the renewed license to a qualified minority purchaser. In New South Media, by contrast, the renewal "hearings" at issue were hearings in name only, with nothing to be resolved or even begun until the collateral proceeding on RKO's qualifications was finished (" . . . no renewal hearing ongoing at the Commission, no evidence-taking underway, no proceeding in midstream or even launched." 685 F.2d at 716). But a distress sale renews a license, and serves the public interest, just as surely as a comparative hearing does -- by divesting the renewed license from an incumbent whose qualifications are in serious doubt, and by assigning that renewed license in a manner that increases diversity of programming and ownership.

Third, the order under review did not insulate a dubious incumbent from license competition. In New South Media, RKO reaped an undeserved benefit because the indefinite freeze on competing applications allowed it to retain its licenses, free

from challenge, for extended terms. Here, the Commission's order removed the questionable licensee as quickly and directly as possible. The order under review did not permit Faith Center to sit on its license; the order required Faith Center to give it up.

Fourth and finally, the New South Media decision gives powerful (even decisive) weight to the public interest in "license competition that normally propels a licensee to better broadcasting." 685 F.2d at 716, quoting Committee for Open Media v. FCC, 543 F.2d 861, 873 (D.C. Cir. 1976). But no one could reasonably expect that Faith Center would be "propelled" to better performance. Unlike the RKO licenses in New South Media, who were vigorously defending their licenses and wanted to keep them, Faith Center wanted to exit, not to offer better performance. By electing a distress sale, it acknowledged that it had no realistic hope and no intention of retaining its license. Indeed, SBH itself refers to "the general agreement that Faith Center should not remain a licensee." SBH Br. 19. The need for a competitive spur to the incumbent that weighed heavily in the Court's decision in New South Media is therefore absent in the case under review.

In summary, in contrast to New South Media, in the order under review the Commission did not put an indefinite "freeze" on competing applications, it did not allow the license renewal proceeding to stagnate, it did not perpetuate Faith Center's tenure, and it did no violence to the principle of applying a competitive spur to incumbents' performance. In simplest terms, the Commission suffered reversal in New South Media because its orders indefinitely avoided disposing of the

question of license renewal. Here, the Commission's order disposed of the license renewal in the quickest and most decisive manner available.

III. THE COMMISSION MADE A RATIONAL DETERMINATION TO  
ADVANCE THE PUBLIC INTEREST IN BROADCASTING  
DIVERSITY THAT SHOULD NOT BE DISTURBED BY A  
REVIEWING COURT.

As we have demonstrated in Sections I and II, SBH possessed no statutory right to transform this distress sale proceeding into a comparative proceeding. The Commission, after weighing the numerous competing policy considerations, allowed Faith Center one last opportunity to complete a distress sale of its television station before opening the license renewal proceeding to competing applicants. This process of rational balancing, by which the Commission manages its own docket and pursues its statutory mandate, is precisely the kind of expert agency determination that reviewing courts are properly reluctant to overturn.

SBH contends that the Commission's order should be overturned because (a) the Commission could not lawfully balance any other interests against SBH's claimed Ashbacker right to a comparative hearing, and (b) the Commission's distress sale policy constitutes unlawful reverse discrimination and therefore should not have weighed in the balance. Both of these contentions are erroneous.

- A. The Commission struck a reasonable balance between the interests served by a comparative hearing and the interests in broadcasting diversity served by the distress sale procedure.
- 

In contending that the Commission should have halted the Faith Center distress sale proceeding and commenced a comparative hearing in its stead, SBH isolates comparative hearings from the public interest goals that such hearings are intended to serve. A comparative hearing is only one means of achieving the public interest goals at the root of the Communications Act.

"[T]he 'public interest standard necessarily invites reference to First Amendment principles," Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 122, 93 S. Ct. 2080, 2096, 36 L.Ed.2d 772 (1973), and, in particular, to the First Amendment goal of achieving "the widest possible dissemination of information from diverse and antagonistic sources," Associated Press v. United States, [326 U.S. 1, 20 (1945)].

FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 795 (1978).

The Commission crystallized those goals in its Policy Statement on Comparative Broadcast Hearings, 1 F.C.C.2d 393 (1965), which accorded major significance to promoting diversity of broadcast expression through diversity of broadcast ownership. "Diversification of control of the media of mass communication is elevated in the 1965 Policy Statement to a factor of primary significance . . ." Citizens Communication Center v. FCC, 447 F.2d 1201, 1207 (D.C. Cir. 1971).

In 1973, this Court instructed the Commission that the public interest in diversification should be implemented by increasing minority involvement in broadcast media ownership.

It is consistent with the primary objective of maximum diversification of ownership of mass communications media for the Commission in a comparative license proceeding to afford favorable consideration to an applicant who, not as a mere token, but in good faith as broadening community representation, gives a local minority group media entrepreneurship.

TV 9, Inc. v. FCC, 495 F.2d 929, 937 (D.C. Cir. 1973) (footnote omitted).

The dearth of minority broadcast owners has been a longstanding obstacle to the public interest goal of diversification. "The extreme underrepresentation of minorities in the ownership of mass media broadcast facilities has been extensively documented and no party here questions it." West Michigan Broadcasting Co. v. FCC, 735 F.2d 601, 603 n.5 (D.C. Cir. 1984), cert. denied, \_\_\_ U.S. \_\_\_ (1985). With this Court's endorsement and encouragement, the Commission has interpreted the public policy favoring diversification to encompass advancing minority ownership. "[O]ver the past decade the courts, the Commission, and the Congress have all concluded that promotion of minority owned broadcast media facilities, where the minority owner will be fully involved in broadcast management, as an important public policy objective within the FCC's 'public interest' mandate." Id. at 607. <sup>11/</sup>

The Commission adopted the distress sale procedure in 1978 as an alternative to the lengthy and costly comparative

---

<sup>11/</sup> Accord Garrett v. FCC, 513 F.2d 1056 (D.C. Cir. 1975); TV 9, Inc. v. FCC, 495 F.2d 929 (D.C. Cir. 1973); Citizens Communications Center v. FCC, 447 F.2d at 1213 n.36.

hearing process, to be applied in limited instances where a distress sale will directly promote the public interest by diversifying media ownership. Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C.2d 979, 981 (1978). Licensees who are apprehensive that their licenses might not be renewed after a full evidentiary hearing are encouraged to assign their licenses to companies with significant minority involvement. The distress sale procedure has a proven and unchallenged record of success. In the first four years of the policy, 27 licenses were assigned to minority owners, thus "contribut[ing] significantly to increased minority ownership in broadcasting." Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 F.C.C.2d 849, 852 (1982).

Despite the established, salutary public policies served by the distress sale proceeding, SBH contends that the Commission was obligated to bring that proceeding to an immediate halt in order to accommodate SBH's demand for a comparative hearing with Faith Center. <sup>12/</sup> SBH argues that the mere filing

---

<sup>12/</sup> SBH argues that the mere filing of its application automatically prevented the Commission from continuing with the distress sale proceeding already in progress. SBH relies on a footnote to the Commission's Clarification of Distress Sale Policy, 44 Rad. Reg.(P&F)2d 479, 480 n.3 (1980): "Distress sales are an option only where no competing applicant is involved in the hearing. In comparative hearings the Ashbacker rights of the challenger to a full administrative comparison with the incumbent properly preclude departure of the existing licensees from the administrative process."

SBH misinterprets the Commission's clarification, which was issued to cope with the particular and limited problem of licensees who were already involved in renewal hearings when  
(footnote continued)

of its application mandates a comparative hearing and outweighs, as a matter of law, not only considerations of diversification of programming and ownership, but also the other interests cited by the Commission in its MO&O, including "the rapid conclusion of this renewal proceeding," the "swift[] end [of] Faith Center's tenure as a licensee of this station," providing "residents of the station's service area with a new licensee whose qualifications are not in doubt," and the avoidance of "a lengthy and expensive comparative renewal proceeding." MO&O at 5.

SBH maintains that it was "unlawful" for the Commission to balance SBH's claimed Ashbacker right to comparative consideration against any and all other policy objectives. SBH Br. 23-24. To the contrary, this Court has affirmed the Commission's power to balance its own well-founded policies against the asserted Ashbacker rights of applicants for comparative hearings. In WLVA, Inc. (WLVA-TV), Lynchburg, Va. v. FCC, 459 F.2d 1286 (D.C. Cir. 1972), this Court affirmed the Commission's refusal to

---

(footnote continued)

the distress sale procedure was initiated. The Commission afforded such licensees an opportunity to invoke the distress sale procedure, but only if no competing applicant was already involved in the hearing, i.e., only if no comparative hearing was already underway. Clarification, 44 Rad. Reg. (P&F) 2d at 479-480. Faith Center was in a noncomparative renewal proceeding when SBH attempted to file its competing application; by its terms, the Clarification applies only to comparative renewal hearings. Moreover, the Commission had authorized Faith Center to invoke the distress sale procedure in 1981, long before SBH appeared on the scene. The Commission thus did not authorize a distress sale proceeding in the face of SBH's competing application. Rather, SBH has tried to use an ostensible competing application as a vehicle to interrupt a distress sale proceeding already authorized and in progress -- a situation to which the Clarification is wholly inapplicable.

conduct a comparative hearing on the basis of "the overriding impact of the Commission's long-standing UHF protection policy," under which VHF stations were denied permission to enlarge their coverage area if that enlargement would be detrimental to UHF development. Id. at 1303. "[A]lthough the Commission's reliance on its UHF protection policy in this context may to some extent be viewed as a limitation on Ashbacker, such a limitation is clearly reasonable." Id. at 1304. <sup>13/</sup>

Noting that Ashbacker itself recognized the Commission's discretion to limit the filing rights of competing applicants (326 U.S. at 333 n.9), the Commission has very recently stated:

The Commission traditionally has balanced an applicant's right to a comparative hearing with the public's interest in having frequencies occupied and operating. . . . The Commission has exercised this discretion over the years and limited the filing rights of competing applicants in order to provide certainty, to avoid disruptions in the processing procedures for high demand services or to further other compelling public interest objectives.

In the Matter of Secs. 73.3572 and 73.3573 Relating to Processing of RM and TV Broadcast Applications, MM Dkt. No. 84-750 (May 6, 1985) at 6-7.

---

<sup>13/</sup> SBH appears to take the position that the Commission may refuse to entertain a comparative hearing application only if the application would interfere with the administration of a proceeding already in progress. SBH Br. 12. This is much too narrow: as WLVA, Inc. makes clear, the Commission has the authority to weigh other policies in addition to mere administrative convenience.

SBH urges principally that comparative hearings provide a competitive "spur" by furnishing "additional incentive to existing licensees to offer optimal service to the public." SBH Br. 10. But a comparative hearing would not serve as a "spur" to Faith Center. Only a licensee who wishes to remain a licensee can be "spurred" to better performance. See pp. \_\_\_\_, supra. Faith Center wanted to relinquish its license; indeed, it had been trying to sell its license for over two years. License competition can only be beneficial if the incumbent wishes to compete. When the licensee wishes to exit -- as Faith Center assuredly did -- there is no one to be "spurred," and a comparative hearing for that purpose is an empty formality. 14/

SBH also invokes the principle that a licensee ought not to be insulated from license competition for a protracted period. SBH Br. 15-16. To the contrary, Faith Center is being insulated from nothing; the Commission approved Faith Center's distress sale to Astroline in order to remove Faith Center's license as quickly as possible. Far from protecting Faith Center's license, the Commission adopted the alternative that would reassign it immediately.

---

14/ As the Supreme Court has observed, it is not at all clear that the public interest would be well served by a reluctant licensee. FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 812-813 (1978). The Court quoted with evident approval the Commission's brief, which stated: "[I]f the Commission were to force broadcasters to stay in business against their will, the service provided under such circumstances, albeit continuous, might well not be worth preserving." Id. at 813.

Moreover, SBH's self-serving enthusiasm for the principles of comparative hearings is lukewarm at best. SBH demands a "right to sole comparative status as against Faith Center" and objects strenuously to the Commission's "re-open[ing] of the window to let in any number of other competing applicants," all of whom SBH dismisses as "opportunistic latecomers." SBH Br. 46. SBH's idea of a comparative hearing is evidently a private affair in which SBH would square off against Faith Center and no one else, despite Faith Center's manifest lack of willingness or ability to participate in such a proceeding. SBH champions comparative hearings, while at the same time insisting on the right to pick and choose among the parties with whom it would compete.

Finally, in Section 310(d) of the Federal Communications Act, Congress directed that comparative considerations have no role in assignments. In acting on an assignment application, "the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or licensee." 47 U.S.C. § 310(d). An assignment, whether in the context of a distress sale or otherwise, <sup>15/</sup> is intended by Congress and the

---

<sup>15/</sup> Generally, the Commission will disapprove an assignment, even to an otherwise qualified assignee, if the qualifications of the present holder of the license are in doubt. See, e.g., LaRose v. FCC, 494 F.2d 1145, 1147-1148 (D.C. Cir. 1974). This general policy is flexible, and is relaxed to accommodate overriding public policy considerations.  
(footnote continued)

Commission to be a consensual transaction, in which the Commission satisfies itself that the assignee is qualified to receive the license but does not otherwise concern itself with whether the assignment is to the party the Commission might have chosen. SBH sought to inject a comparative proceeding into an assignment, where Congress has declared that comparative considerations do not apply.

\* \* \* \* \*

In short, the Commission balanced the benefits of the distress sale proceeding against SBH's argument to halt that proceeding and commence an exclusive comparative license renewal proceeding. The Commission struck a manifestly rational balance and decided to allow Faith Center the opportunity to complete a distress sale to Astroline (a qualified minority purchaser), but to make that the last chance for a distress sale before opening Faith Center's license to a full comparative proceeding. "The Commission's implementation of the public-interest standard, when based on a rational weighing of competing policies, is not to be set aside by the Court of Appeals, for 'the weighing of policies under the "public interest" standard is a task that Congress has delegated to the Commission in the first instance.'" FCC v. WNCN Listeners Guild, 450 U.S. 582, 596 (1981), quoting FCC v.

---

(footnote continued)

Distress sales represent only one exception to this rule where strong competing public interests are present. In other cases, the Commission waived its general policy for the protection of innocent creditors of a bankrupt licensee. LaRose v. FCC, supra.

INSERT

Termination of protracted proceedings and restoration of service are other interests that have justified assignments even without a determination of the assignor's qualifications. See, e.g., George E. Cameron Jr. Communications (KROQ), 56 Rad. Reg. (P&F) 825, 828 (1984) (approval of assignment "will terminate these protracted and burdensome proceedings and permit the stations to continue normal operations unencumbered by the prospect of further costly and time consuming litigation.")

SS  
insert

National Citizens Committee for Broadcasting, 436 U.S. at 810. <sup>16/</sup>

- B. SBH's attack on the constitutionality of the distress sale procedure is groundless.

SBH devotes all of three pages of its brief to a back-handed and undeveloped claim that the distress sale program unconstitutionally discriminates against non-minorities. A constitutional question of this magnitude should not be, and need not be, confronted on the limited record available in this case. While the record is practically devoid of legal and factual support for SBH's claim of reverse discrimination, the gross underrepresentation of minorities in media ownership is a matter of undisputed judicial, administrative and legislative recognition. Even if it were appropriate to address SBH's assertions in this litigation, no substantial constitutional issue exists. The distress sale program is an appropriate means repeatedly sanctioned by Congress, by which the Commission has attempted to correct the underrepresentation of minorities in the broadcast media.

---

<sup>16/</sup> See also NAACP v. FCC, 682 F.2d 993, 1001 (D.C. Cir. 1982) (Commission must be given "leeway to balance the competing policy considerations and, with due regard to the record and its own expertise, choose an appropriate course of action.")

Courts should not address constitutional questions unless it is unavoidable. "There is no occasion to consider . . . constitutional questions unless their answers are indispensable to the disposition of the cause before us." Stefanelli v. Minard, 342 U.S. 117, 120 (1951) (Frankfurter, J.). As we have already demonstrated, SBH's claim that it was "statutorily entitled" (SBH Br. 31) to comparative consideration with Faith Center is based on SBH's erroneous interpretation of Section 309 of the Communications Act. SBH's erroneous statutory argument makes it unnecessary to reach its constitutional claim.

Moreover, SBH's constitutional arguments are based on factual and legal errors. SBH asserts that the distress sale program is unconstitutional because it "unquestionably excluded SBH from any effective consideration." SBH Br. 29 (emphasis in original). The distress sale program is of course designed to increase the number of minority-owned stations. But this is not a case in which the Commission has reserved certain channels or broadcast frequencies solely for minority owners, and refused to entertain petitions of nonminorities for access to them. Interested parties, including rivals for the license in question, can oppose a licensee's election of the distress sale procedure, and they can oppose as well specific distress sale transactions when they are presented to the Commission for approval or disapproval. "A distress sale, contrary to the views of Faith . . . is a form of extraordinary relief and depends on the facts and circumstances of the individual petition. Although distress

sales are generally granted, they are not a matter of right." Faith Center, Inc., 82 F.C.C.2d 1, 35 (1980). <sup>17/</sup>

In fact, the distress sale program is far less exclusionary of nonminorities than the "set-aside" program upheld by the Supreme Court in Fullilove v. Klutznick, 448 U.S. 448 (1980), which reserved for minority firms (subject to limited administrative waiver) 10% of federal funds for local public works projects. "It is not a constitutional defect in this program that it may disappoint the expectations of nonminority firms. When effectuating a limited and properly tailored remedy to cure the effects of prior discrimination, such a 'sharing of the burden' by innocent parties is not impermissible." Id. at 484 (Burger, J.).

SBH relies principally on Firefighters Local Union No. 1784 v. Stotts, 104 S. Ct. 2576 (1984), from which SBH infers that its claimed "statutorily entitled" rights may not be impaired unless the minority beneficiary of the program "has been the specific victim of discrimination which has barred him or her from broadcast ownership." SBH Br. 31. But Stotts is wholly inapplicable, as SBH itself evidently acknowledges when it characterizes its own argument as based merely on a "suggestion implicit" in that decision. SBH Br. 31.

---

<sup>17/</sup> Indeed, the Commission denied distress sale treatment for competitors two other television stations owned by Faith Center, and competitors filed applications for both of those licenses. Faith Center, Inc., 82 F.C.C.2d 1 (1980), recons. denied, 86 F.C.C.2d 891 (1981).

Stotts was purely a statutory decision -- not a constitutional one -- interpreting the courts' remedial power under Title VII of the Civil Rights Act of 1964. Title VII limits a court's ability to impair employee rights under a bona fide seniority system to instances of individual victims of discrimination, and not to mere members of a disadvantaged class. 104 S. Ct. at 2588. <sup>18/</sup> But neither Title VII nor seniority systems are involved in this case. Stotts rests on Title VII's particular statutory protection for seniority systems against court-compelled remedial orders; it has absolutely nothing to do with the constitutional standards for a voluntary procedure such as the Commission's distress sale program. <sup>19/</sup>

---

<sup>18/</sup> "Title VII precludes a district court from displacing a non-minority employee with seniority under the contractually established seniority system absent either a finding that the seniority system was adopted with discriminatory intent or a determination that such a remedy was necessary to make whole a proven victim of discrimination." Stotts, 104 S. Ct. at 2587 n.9.

<sup>19/</sup> In fact, the Stotts Court expressly noted that its decision did not reach the question of what an employer might lawfully adopt as a voluntary affirmative action program. Id. at 2590.

Subsequent lower court decision have treated Stotts as inapplicable to voluntary affirmative actions programs not imposed by a court under the remedial powers of Title VII. Wygant v. Jackson Board of Education, Jackson, Mich., 746 F.2d 1152, 1157-58 (6th Cir. 1984); Kromnick v. School District of Philadelphia, 739 F.2d 894, 911 (3d Cir. 1984); Britton v. South Bend Community School Corp., 593 F. Supp. 1223, 1230-31 (N.D. Ind. 1984).

Moreover, even in a Title VII case -- which this case most certainly is not -- the courts have interpreted Stotts as not imposing a requirement of actual discrimination.

(footnote continued)

Moreover, the Commission is justifiably concerned with the underrepresentation of minorities in broadcasting, regardless of the cause of that underrepresentation. "As this Commission, the courts, and the Congress have recognized, there is a critical underrepresentation of minorities in broadcast ownership, and full minority participation in the ownership and management of broadcast facilities is essential to realize the fundamental goals of programming diversity and diversification of ownership which are at the heart of the Communications Act and the First Amendment." Waters Broadcasting Corp., 91 F.C.C.2d 1260, 1264 (1982), aff'd sub nom. West Michigan Broadcasting Co. v. FCC, 735 F.2d 601 (D.C. Cir. 1984), cert. denied, \_\_\_ U.S. \_\_\_ (1985) (footnote omitted).

Although there is ample evidence that discrimination has denied minorities ownership opportunities, <sup>20/</sup> the

---

(footnote continued)

Had the Court intended to radically change its interpretation of Title VII law so as to require a finding of actual discrimination in any affirmative action case, I believe it would have said so. In the absence of clearer authority, I decline to read such an expansive meaning into an opinion limited to a discussion of layoffs made in violation of a bona fide seniority system.

Deveraux v. Geary, 596 F. Supp. 1481, 1486 (D. Mass. 1984) (emphasis in original). Yet SBH erroneously contends that Stotts extends a requirement of actual discrimination beyond Title VII when the courts do not interpret Stotts as establishing such a requirement even within Title VII.

<sup>20/</sup> "Generations of discrimination have created a form of racial caste. In the view of the panelists a direct result of the general societal discrimination has been the underrepresentation of these minorities in the ownership of broadcast stations as well as other communications (footnote continued)

Commission, which is charged to serve the public interest, has the authority and the duty to address itself to the problem of minority underrepresentation even if it were not the product of discrimination. The Commission acts within its proper role not only by seeking to do justice to the members of minority groups who have been victimized by discrimination or the effects of past discrimination, but also by seeking to benefit the public through the presentation of as wide as possible a range of programming and opinion.

This additional scope of the Commission's authority becomes apparent by comparison to Fullilove v. Klutznick, 448 U.S. 448 (1980), wherein the Court upheld a set-aside program -- more restrictive of nonminorities than the distress sale procedure -- solely to redress the economic injustices of past industrywide discrimination. Diversification of construction contractors on public works projects does not, however, serve an independent First Amendment interest. But diversification of the channels of expression manifestly does advance the policies of the First Amendment, in addition to redressing the effects of industrywide discrimination.

---

(footnote continued)

facilities." Federal Communications Commission Minority Ownership Taskforce, Minority Ownership in Broadcasting 7-8 (1978) (footnote omitted).

"The Conferees find that the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications . . . ." H.R. Conf. Rep. No. 765, 97th Cong., 2d Sess., reprinted in 1982 U.S. Code Cong. & Ad. News 2287, cited in West Michigan Broadcasting Co. v. FCC, 735 F.2d at 613-614.

The Commission's remedial powers are thus broader than those of courts or agencies lacking the Commission's unique responsibilities. But SBH advances arguments that would confine the Commission more narrowly than other agencies -- for example, the unfounded claim that a beneficiary of the distress sale policy must have been the "specific victim of discrimination which has barred him or her from broadcast ownership " SBH Br. 31. The distress sale procedure is a constitutional means toward a constitutional end, and SBH's arguments to the contrary are groundless. As noted above, however, the Court need not reach this issue; ample alternative grounds support affirmance of the Commission's order.

IV. ASTROLINE QUALIFIES FOR APPLICATION OF  
THE DISTRESS SALE PROCEDURE.

SBH argues that the record does not support Astroline's status as a "minority-controlled entity." SBH Br. 34-37 <sup>21/</sup> To

---

<sup>21/</sup> SBH is simply wrong in its claim that "[i]n order to invoke the 'distress sale' policy, a proposed assignee must be a minority-controlled entity." SBH Br. 34 (emphasis added). In 1982, the Commission clarified its distress sale policy for the express purpose of permitting limited partnerships in which there was "significant minority involvement" -- but not necessarily control -- to participate in the program. Policy Statement and Notice of Proposed Rule Making, 92 F.C.C.2d 849, 853-855 (1982). Nevertheless, Astroline is qualified for the program under any definition because Astroline is a minority-controlled entity. Its general manager, Mr. Ramirez, has legal and operational control of the partnership and the station. Astroline therefore clearly meets the Commission's criteria for significant minority involvement.

the contrary, Astroline is fully qualified as a minority purchaser, and SBH's arguments to the contrary are groundless.

In its Policy Statement and Notice of Proposed Rule Making, 92 F.C.C.2d 849 (1982), the Commission revised and clarified the criteria for participating as a purchaser in the distress sale program. The Commission declared that limited partnerships would be eligible for the program if (a) the general partner is a member of a minority group, and (b) the general partner owns more than a 20 per cent interest in the broadcasting entity. Id. at 855. The Commission explained:

Limited partnerships are designed to encourage trade by uniting parties who possess capital to invest with parties who are willing to expend their energies and efforts actively running a business. Since complete control and management rests with the general partner, the limited partner's investment is akin to that of a corporate shareholder who has limited liability and lacks a voice in the operation of the enterprise.

Id. at 854 (footnotes omitted). It is undisputed that Astroline satisfies the literal terms of the Commission's test. Astroline is a limited partnership in which Mr. Richard Ramirez is a general partner. Mr. Ramirez, who is Hispanic (a defined minority group under the distress sale program), has a 21 per cent ownership interest and a 70 per cent voting interest in the entity. Mr. Ramirez will be General Manager of the station. Petition for Special Relief of Faith Center, Inc. at 3-4 (JA\_\_).

SBH claims that Astroline's minority status is not bona fide because Mr. Ramirez did not contribute a pro rata share of his personal funds to capitalization of the partnership. SBH overlooks the very purpose of the distress sale program: to assist minority group members to overcome the financial handicaps

that have limited their ownership of broadcast properties. Recognizing that "'financing has remained the single greatest obstacle' to minority entry into the telecommunications industry," the Commission issued its 1982 Policy Statement to increase minorities' "opportunities to attract investors in their enterprises, and thus secure financing." Policy Statement and Notice of Proposed Rule Making, 92 F.C.C.2d at 853.

Mr. Ramirez brings to the enterprise his considerable experience in the broadcast industry, both in radio and television, and his willingness to devote himself to the day-to-day operation of the station. He is the only principal in Astroline with the experience to operate a broadcast property. His partners supply only the station's financing, for which they will receive a return on their investment. The limited partners' willingness to invest their money while conferring managerial and voting control of the station upon Mr. Ramirez is exactly what the distress sale program is designed to encourage.

Moreover, the Commission's primary definition of control has always included complete managerial responsibility for the operation of the enterprise. "We have generally found 'control' to be in those who have authority to determine the basic policies of a station's operations, including programming, personnel and financial matters. Southwest Texas Broadcasting Council, 85 F.C.C.2d 713, 715 (1981)." Policy Statement and Notice of Proposed Rule Making, 92 F.C.C.2d at 855 n.30. See also William M. Bernard, 44 Rad. Reg. (P&F) 2d 525 (1978); Anax Broadcasting, 49 Rad. Reg. (P&F) 2d 1598 (1981). Mr. Ramirez possesses this complete operational authority over the management

of Astroline, and thus satisfies the basic test of control. Comments [of Astroline Communications Company Limited Partnership] in response to Consol. Comments of Shurberg Broadcasting of Hartford at 6-7 (JA\_\_\_\_). 22/

SBH points to no evidence whatsoever to back up its claim that Mr. Ramirez' involvement is a sham -- that he does not actually perform as the station's general partner and general manager. The size of Mr. Ramirez' personal investment cannot determine that issue, but it is virtually the only evidence on which SBH relies. In effect, SBH attempts to engraft a new requirement onto the distress sale procedure -- that the minority general partner invest a minimum share of his personal funds in the venture -- that the Commission did not see fit to adopt.

In short, SBH criticizes the distress sale procedure for operating in precisely the manner it should: it united Mr. Ramirez, who has the skills, experience and ability to operate a television station but not the finances to acquire it, and the Astroline limited partners, who are willing to invest the necessary capital but lack the industry experience or the interest to devote to the day-to-day management of a television station. Nothing in the distress sale program requires or even

---

22/ SBH argues that Mr. Ramirez lacks complete control over the operations of Astroline because he regularly consults with the limited partners. SBH Br. 37. Assuming that the extra-record material cited by SBH is properly before the Court, it is not inconsistent with Mr. Ramirez' complete authority for the operation of the station. There is no rule, either of the Commission or in partnership law generally, that requires limited partners to wall themselves off from the partnership in which their funds are invested.

suggests that a minority general partner make a minimum personal investment in the enterprise. All that is required is that the minority partner be a general partner, and possess a 20 per cent or greater ownership interest. Astroline therefore qualifies as a purchaser under the express terms of the distress sale procedure, and SBH's contentions to the contrary are baseless.

7LHS1A(3)

Before the  
Federal Communications Commission  
Washington, D. C. 20554

In re:

ARCH COMMUNICATIONS, INC.

Request for Call Sign Change

46

MEMORANDUM OPINION AND ORDER

Adopted: May 16, 1985

Released: May 21, 1985

By the Chief, Mass Media Bureau:

Introduction

1. Arch Communications, Inc. (Arch), filed a request on June 18, 1984, to change the call sign of new station WETG(TV), channel 61, Hartford, Connecticut, to WTIC-TV. Call signs WTIC and WTIC-FM are already in use by The Ten Eighty Corporation (Ten Eighty) for its Hartford radio stations, but Arch and Ten Eighty are not commonly controlled. Therefore, Arch also sought a waiver of section 73.3550(i) of the Rules, which provides that only commonly controlled stations in different broadcast services can be assigned common call signs. The staff granted the waiver and the requested call sign by letter dated August 2, 1984. 1/ We now consider that action, the subsequent objections filed by Post-Newsweek Stations, Connecticut, Inc. (Post-Newsweek licensee of station WFSB(TV), channel 3 (CBS), Hartford, and by Viacom Broadcasting, Inc. (Viacom), licensee of station WVIT(TV), channel 30 (NBC), New Britain, Connecticut and related pleadings. 2/

Background

2. The Travellers Insurance Company (TIC) began operating an AM station in

1/ The station began operation on September 17, 1984, and is using the WTIC-TV call sign.

2/ The related pleadings are: (1) a supplement filed August 23, 1984, by Post-Newsweek; (2) a response to Post-Newsweek's pleadings filed by Arch on September 4, 1984; (3) a reply filed September 13, 1984, by Post-Newsweek; (4) a response to Viacom's pleading filed by Arch on September 25, 1984; (5) Viacom's reply of October 5, 1984; (6) comments supporting Post-Newsweek's and Viacom's pleadings, filed October 10, 1984, by Channel 20 Enterprises Limited Partnership, licensee of station WTXN-TV, channel 20, Waterbury, Connecticut; and (7) Arch's opposition to those comments filed October 10, 1984.

BH 1245

acceptance in a market." Arch also urged that confusion of the public as to the ownership of the stations would be unlikely because of the familial relationships and the limited degree of cross-ownership. Arch also noted that the Commission only recently relaxed its standards concerning the allocation of call signs, Broadcast Call Sign Assignments, 54 R.R.2d 1493 (1983), reconsideration denied, 56 R.R.2d 540 (1984), and had waived its former rules in different circumstances to aid struggling UHF stations, such as WTIC-TV, Durham Life Broadcasting Service, Inc., 43 R.R.2d 1161 (1978). Arch further stated:

[A] waiver is justified because it will enable Arch's fledgling UHF station to achieve viewer identification and acceptance necessary to compete effectively in the competitive Hartford market. Hartford already has established television stations licensed to such prominent multiple owners as Post-Newsweek Stations, Viacom Broadcasting, Inc. and Capital Cities Communications, Inc. In addition, there are independent stations licensed to Hartford and Waterbury, Connecticut, which serve the entire market, and there is substantial cable television viewing of New York and Boston stations throughout the market. As a newcomer to the market, Arch will be aided immeasurably if it can use the WTIC call letters, which have been in use in the Hartford market for over 60 years.

5. As noted, no objections to the grant of the waiver and call sign had been filed. The staff considered the showing made by Arch and issued its August 2, 1984 letter, which assigned WTIC-TV for use by Arch on channel 61, Hartford.

#### Procedural Matters

6. The parties have contested the procedural posture of the case and the standing of the petitioners. In that regard, section 73.3550 does not permit the filing of objections to the assignment of call signs, but does not purport to prohibit the filing of objections to requests for waivers of that rule. Section 73.3550 no longer calls for prior public notice of call sign requests and any associated waivers, so that Post-Newsweek and Viacom had no constructive notice (and apparently no actual notice) of Arch's request and could not have objected to the waiver prior to its grant. Accordingly, they have established "good reason," under section 1.106(b), for not participating at an earlier stage of this proceeding. This is not, however, dispositive of their standing to object to the requested waiver. In this regard, both Viacom and Post-Newsweek assert that some area viewers still associate the WTIC-TV call letters with WFCB(TV)'s channel 3 operation and that confusion will result in distorted audience ratings when Arch identifies its channel 61 operation as WTIC-TV. The petitioners rely on an affidavit executed by an individual who reviewed recent ratings diaries to establish that some viewers still use WTIC-TV to identify WFSB(TV). 3/ Such distortions may affect Post-Newsweek's advertising rates and program decisions. In these circumstances,

Viacom's principal competitors, Post-Newsweek's WFSB(TV), and Viacom would be in a comparatively better position. We therefore conclude that Viacom has not established that it is "aggrieved" or "adversely affected" by our action, and its pleadings will be dismissed. 7/

Summary of Pleadings

8. Post-Newsweek notes that the limitation on assigning common call signs only to commonly owned stations was promulgated in 1949. It states that the rule has been retained "in full, undiminished vigor," despite the Commission's elimination of other major restrictions on call letter use, citing Broadcast Call Sign Assignments, above. The rule, according to Post-Newsweek, has a dual purpose: (1) to prevent confusion of the public as to the management and operation of the station; and (2) the prevention of one broadcaster from unfairly trading on the good will of another broadcaster in a market, affecting, among other things, its ratings. Post-Newsweek contends at length that both goals will be undermined by Arch's continued use of WTIC-TV. Post-Newsweek summarizes its position as to public confusion as follows:

Arch simply cannot have it both ways. Either the stations are going to be commonly owned and operated, in which case Arch will need a waiver of [section 73.3550], or they will not be, in which case the family relationships, cross-ownership, prior identification of Arnold Chase with the FM station, and the like, virtually guarantee that a substantial portion of the public will be misled, making this a particularly appropriate case for enforcement of Section 73.3550(i).

Nor does Post-Newsweek believe that Ten-Eighty's consent to the use of WTIC-TV disposes of what it characterizes as the second purpose of the rule: trading on the reputation of another broadcaster. It contends that Arch will be using WTIC-TV to benefit from Ten-Eight's radio market recognition and the television market recognition developed by TIC.

9. Arch believes that our grant of its waiver request is fully supported. It restates the matters set out in its waiver request, as summarized above in paragraph four. Arch also states that it is to its own benefit to assure that viewers do not confuse it with any other station. The primary purpose of the

7/ We understand Viacom's concern that ratings be conducted fairly. The concept of standing, however, as embodied in section 405 of the Act and section 1.106 of the Rules, is designed to limit formal participation in Commission proceedings to those with an actual stake in the outcome. We know of no case, and Viacom cites none, where standing was conferred on the basis of an interest in accurate ratings generally, or of fair competition between two other licensees in a market. We do not here conclude that standing will never be found in cases concerning ratings disputes. We hold only that Viacom has failed to establish "with particularity the manner in which [its] interests are adversely affected by the action taken." Section 1.106(b)(1).

its standing, we are not persuaded that the likelihood of injury to Post-Newsweek as a result of alleged confusion between WFSB(TV) and Arch's channel 61 operation is so sufficient as to warrant denying the requested waiver. As Arch correctly notes, we once prohibited the reassignment of relinquished call signs for 180 days to avoid confusion. This restriction was eliminated by rulemaking. Broadcast Call Sign Assignments, above. The Commission there found that the possibility of public confusion and any concomitant effects on ratings were unconvincing and did not justify retention of the rule. 54 R.R.2d at 1496-97. Given that conclusion in a rulemaking proceeding, we cannot find a cognizable public confusion after a ten-year hiatus in the use of a call sign. 10/ In any event, Post-Newsweek has not contested Arch's statements (which are accurate to the best of our knowledge) that most viewers identify television stations by channel number, and that Nielsen uses a combination of program name, time of day, call sign and channel number to establish viewership. These factors should clearly minimize the potential for any confusion on the public's part having any significant effect on Post-Newsweek's ratings. Further, it should be noted that as with other aspects of call sign disputes, Post-Newsweek is free to pursue any available remedies in local courts.

13. Our third point of inquiry is the extent to which the grant of the waiver is contrary to the policies underlying the promulgation of the rule. As noted above, Post-Newsweek asserts that the rule has a dual purpose: (1) to assure that one broadcaster does not use call signs so as to trade on another broadcaster's good will; and (2) to assure that the public does not assume that the common call letters are indicative of common ownership or control. Post-Newsweek cites no case establishing this alleged dual goal. To the contrary, recent decisions make it clear that the Commission no longer believes that significant confusion of the public arises out of the assignment of call signs. The abolition of the 180-day period in which relinquished call signs must be held is evidence of that position. As noted by Arch, the Commission expressly stated the purpose of call letters is: "to permit identification of a station and not the principals of the licensee." Notice of Proposed Rule Making In Docket No. 83-373, 48 Fed. Reg. 20252, 20254 (1983). We therefore reject Post-Newsweek's contention that consideration of public confusion is called for or desirable in this case.

14. The rule is designed to serve the second policy stated by Post-Newsweek: prohibiting one broadcaster from trading on the good will of another. In this case, however, the affected broadcaster has granted its consent to the use of its call sign. We are thus in the position of insisting on conformance with a rule designed to protect a broadcaster that has declined that protection. Imposing a regulatory burden where it serves no purpose is contrary to the public interest, and the burden of pleading a case for waiver of the rule is not high in these circumstances. Indeed, we cannot conclude how denial of the waiver can be justified in this case. We believe, therefore, that a grant of Arch's waiver request will serve the public interest.

10/ To hold otherwise would be to revert to the long-abandoned policy of reserving call signs indefinitely. See Assignment of Call Signs, above.

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED

MAY 23 1985

FCC  
Office of the Secretary

In Re Application of )  
Astroline Communications Company ) File No. BALCT-840629KS  
Limited Partnership )  
Hartford, Connecticut )  
For Modification of Licensed )  
Facilities of WHCT-TV )  
To: James C. McKinney  
Chief, Mass Media Bureau

MOTION FOR EXTENSION OF TIME

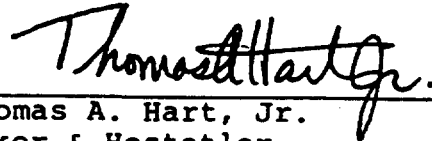
Astroline Communications Company Limited Partnership ("ACC"), through counsel and pursuant to § 1.46 of the Federal Communications Commission's Rules, hereby requests an extension of time through and including June 10, 1985 to respond to the Petition to Dismiss filed on May 13, 1985 by The Neighbors ("Neighbors"). This Petition opposes the application to modify the tower and antenna site filed by ACC on February 11, 1985.

ACC requests this extension to thoroughly review the engineering statements and other attachments filed by Neighbors which relate to ACC's request to modify its tower and antenna site. A grant of this request will not delay these proceedings, nor will it prejudice Neighbors. Further, counsel for Neighbors has graciously consented to this request.

WHEREFORE, ACC respectfully requests that the due date for its Opposition to Petition to Dismiss be extended through and including June 10, 1985.

Respectfully submitted,

ASTROLINE COMMUNICATIONS COMPANY  
LIMITED PARTNERSHIP



Thomas A. Hart, Jr.  
Baker & Hostetler  
1050 Connecticut Avenue, N.W.\*  
Washington, D.C. 20036

(202) 861-1500

Its Attorney

May 23, 1985

---

\*Please note counsel for ACC's new address at Baker & Hostetler.

CERTIFICATE OF SERVICE

I, Cynthia D. Hamm, do hereby certify that on this 23rd day of May 1985 a copy of the foregoing Motion for Extension of Time was served by first-class, postage prepaid mail addressed as follows:

James C. McKinney, Esquire  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 314  
Washington, D.C. 20554

Clay Pendarvis, Esquire  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 700  
Washington, D.C. 20554

Clifford M. Harrington, Esquire  
Fisher, Wayland, Cooper & Leader  
1255 23rd Street, N.W.  
Suite 800  
Washington, D.C. 20037

  
CYNTHIA D. HAMM